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T.R.A. DOCKET ROOM  
January 20, 2005

Guy M. Hicks

General Counsel

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *CapTel Services for the Hard-of-Hearing and the Late Deafened Citizens  
of Tennessee*  
Docket No. 05-00014

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Initial Comments* in the referenced matter.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *CapTel Services for the Hard-of-Hearing and the Late Deafened Citizens of Tennessee*

Docket No. 05-00014

**INITIAL COMMENTS OF  
BELLSOUTH TELECOMMUNICATIONS, INC.**

On January 14, 2005, the Tennessee Regulatory Authority (the "Authority") issued a *Notice* soliciting comments regarding how best to implement Public Chapter 912, which modifies one subsection of the state statute establishing the Assistive Telecommunications Device Distribution Program (the "ADD Program"). BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits these *Initial Comments*.<sup>1</sup>

The Authority's *Notice* suggested that implementation of Public Chapter 912 would require an increase in assessments of certain telecommunications service providers. BellSouth opposes any increase in its assessment. Based on a 1990 *Order* of the Tennessee Public Service Commission (the "PSC"), the ADD Program is currently being funded by local exchange carriers, including BellSouth, and interexchange carriers, based on an obsolete funding mechanism. CLECs, on the other hand, are not, to BellSouth's knowledge, providing any financial support to the ADD Program. State statutes and Authority Rules require that all telecommunications service providers, including CLECs, contribute to the funding

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<sup>1</sup> BellSouth requests the opportunity to submit additional comments at such time as the Authority makes a specific proposal with respect to the implementation of Public Chapter 912.

of the Program.<sup>2</sup> Before considering any increase in assessments, the Authority should ensure that all parties are complying with the law and paying their fair share to support the ADD Program. For the reasons explained below, the Authority should also develop a new competitively-neutral funding mechanism.

Public Chapter 912, now codified at T.C.A. § 65-21-115(b), revised only one subsection of the statute governing the ADD Program. T.C.A. § 65-21-115(b) now provides as follows:

It is the legislative intent that such program be designed with consideration of fair distribution of equipment that is technologically available and economically feasible to be provided to assist individuals with any disability using the basic telephone network.

This provision is straightforward. It authorizes the Authority to employ new technology in the ADD Program and allows the ADD Program to benefit individuals with any disability, as opposed to just those with hearing impairments.

Public Chapter 912 did not make any change to the other sections of the statute.<sup>3</sup> Notably, the General Assembly did **not** change the requirement that **all** telecommunications service providers contribute to the funding of the Program. The term “telecommunications service provider” is defined by state law to include CLECs.<sup>4</sup> Authority Rule 1220-4-10-.02 also makes clear that CLECs are required to make contributions to the ADD Program.

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<sup>2</sup> The only exception is that a telecommunication service provider with less than \$5 Million of Tennessee intrastate gross receipts for the calendar year is not required to make a contribution

<sup>3</sup> For example, Public Chapter 912 did not make any change to the cap on aggregate annual assessments

<sup>4</sup> See T C A § 65-4-101(8)

In 1990, the PSC established a funding mechanism to provide telecommunications services to the hearing impaired.<sup>5</sup> That funding mechanism, which is still being used today, is obsolete and does not comply with state law. The funding mechanism provided that the total annual program cost in Tennessee would be divided into two cost figures and would be allocated to the intraLATA and interLATA jurisdictions. The PSC's *Final Order* provided that each Tennessee telephone company would pay a *pro rata* share of the costs assigned to the interLATA and intraLATA jurisdictions.

The local exchange carriers were authorized to recover the interLATA cost assessments from interexchange carriers through an annual adjustment to the Common Carrier Line Charge ("CCLC"). Adjustments to the CCLC were to be made consistent with adjustments to access rates made by the PSC in the *Megacom* Docket.<sup>6</sup>

IntraLATA cost assessments were to be recovered by local exchange companies as a part of each company's general revenue requirements. Any participating local exchange company was given the right to petition the PSC for relief from any significant financial impact directly relating to their DPRS cost assignment.<sup>7</sup>

This 1990 PSC *Order* is now obsolete for a number of reasons. First, the *Megacom* Docket, on which adjustments to interLATA cost assessments were to be based, is no longer in existence. In 2002, finding that market conditions and basic regulatory principles underlying the *Megacom Order* had changed dramatically, the Authority held that the PSC's 1988 *Megacom Order* was obsolete as to rate of return

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<sup>5</sup> See *Final Order* entered October 17, 1990, *In Re Proceeding to Establish a Dual Party Relay System ("DPRS") to Provide Telecommunications Access for the Hearing and Communication Impaired*, Docket No. 89-03796

<sup>6</sup> See Docket No. 01-00799

<sup>7</sup> See *Final Order*, at p. 7

companies. The TRA had previously determined that the price regulation statutes superseded the requirements of the *Megacom Order*.<sup>8</sup> Second, the PSC's mechanism for allowing ILECs to recover their cost allocations as a part of each company's general revenue requirements is now obsolete, at least as to local exchange carriers that have elected price regulation under T.C.A. § 65-5-109. Third, CLECs did not exist prior to the 1995 Tennessee telecommunications reform legislation and the 1996 Federal Telecommunications Act. The PSC's 1990 *Final Order*, therefore, did not specifically identify CLECs as sources of funding the ADD Program.<sup>9</sup>

The current funding mechanism also does not comply with state law. State law is clear that all "telecommunications service providers" must contribute to the ADD Program. "Telecommunications service providers" is broadly defined to include CLECs.<sup>10</sup> The only exception is that a telecommunications service provider with less than \$5 Million of Tennessee intrastate gross receipts for the calendar year is not required to make a contribution. It is BellSouth's understanding that no CLECs in Tennessee, regardless of the amount of their intrastate gross receipts, have provided financial support for the ADD Program.

Moreover, BellSouth has no way of knowing whether or not other telecommunications service providers are paying their fair share to support the ADD Program. In order to have the information necessary to file more detailed comments in this proceeding, BellSouth respectfully requests that the Authority (1) provide an

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<sup>8</sup> See Order entered April 4, 2002 in Docket No 01-00799. "The Authority has previously determined that the price regulation statutes supersede the requirements of the Megacom Order and, therefore, the price regulated local exchange companies (BellSouth, Sprint-United, and Citizens of Tennessee) are no longer required to adjust their access rates in accordance with the Megacom Order." A copy of the Order is attached.

<sup>9</sup> The PCS's *Final Order* did require that each Tennessee telephone company pay a *pro rata* share to support the Program. See *Final Order* at p 5.

<sup>10</sup> See T C A § 65-21-115(a). See also Authority Rule 1220-4-10- 02.

accounting for the assessments made to all telecommunications service providers in Tennessee for the previous three years, (2) institute a process for developing a new, competitively-neutral funding mechanism for the ADD Program, and (3) allow interested persons to submit comments after the Authority makes a specific proposal with respect to implementation of Public Chapter 912.<sup>11</sup>

No increase in assessments should be considered until this process is complete. This process will allow the Authority to ensure that all parties are paying their fair share consistent with state law. A new competitively-neutral funding mechanism that includes assessments from carriers not now participating may result in additional funding for the ADD Program without increasing assessments.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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<sup>11</sup> If such an accounting would result in the disclosure of information deemed proprietary, BellSouth requests that a Protective Order be entered

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION  
October 17, 1990 NASHVILLE, TENNESSEE

IN RE: PROCEEDING TO ESTABLISH A DUAL PARTY RELAY SYSTEM (DPRS)  
TO PROVIDE TELECOMMUNICATIONS ACCESS FOR THE HEARING AND  
COMMUNICATION IMPAIRED

DOCKET NO. 89-03796

FINAL ORDER

This matter is before the Tennessee Public Service Commission upon its own motion to establish a special telecommunications service for the hearing and speech impaired as provided in the caption above. This is the final action to be taken in a rather lengthy docket concerning the establishment of DPRS<sup>/1</sup> in Tennessee.

This matter was considered at the regularly scheduled Commission Conference held on July 3, 1990. At that time, the remaining final recommendations of the Dual Party Relay System Advisory Committee were considered by the Commission. After a review of the DPRS Advisory Committee's final report, the report of the RFP selection sub-committee and the provisions of all prior orders in this docket, it was concluded that Dual Party Relay Service should be commenced on September 24, 1990, as provided for herein.

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<sup>/1</sup> DPRS is an operator service for the communication impaired. The hearing impaired individual uses a special telephone device (TDD) to type a message to an operator central, and this specially trained operator relays the call verbally to a non-impaired individual and vice versa.

## Background

On April 3, 1989, the Commission concluded that the implementation of an intrastate Dual Party Relay System providing complete telecommunications access for the speech and hearing impaired in this state, was in the public interest, and ordered that a study be conducted to determine the best way in which to provide this service.

The Commission ordered the establishment of an advisory committee made up of representatives of the hearing impaired community, the state's telecommunications industry, the general public, and the Commission staff. This committee met over the time period of a year, and reviewed all issues relevant to the provision of DPRS in Tennessee.

After these deliberations, the DPRS advisory committee issued a final report which recommended specific Commission action regarding service standards for DPRS, administration of the DPRS, and a funding formula.

The Commission in an Order issued on April 23, 1990, adopted the Committee's recommendations with regard to service standards and ordered these to be incorporated in a request for proposals (RFP) to be submitted to those companies wishing to provide DPRS in Tennessee. This RFP was issued by the Commission on behalf of all the telephone companies in Tennessee due to the proprietary and highly competitive nature of the DPRS bidding process. The Commission also established a RFP selection sub-committee made up



of members of the DPRS Advisory Committee, non-bidding telephone companies, and Commission staff members.

The Commission selected AT&T Communications of the Southern States (AT&T) to be the DPRS service provider for end users in Tennessee on June 7, 1990, after a review of the DPRS selection sub-committee's recommendations. AT&T expects to commence DPRS service on or about September 24, 1990.

#### Goal of DPRS

It is the goal of the Commission in providing a DPRS in Tennessee that the hearing and speech impaired telecommunication user have access to and enjoy telephone use to the same degree and with the same quality of service now enjoyed by non-hearing impaired subscribers to telephone service. At present, direct telephone communication for the hearing impaired is limited to communications between parties possessing or using special equipment (TDD). Private business, community and governmental services without such equipment cannot be accessed directly by telephone by the hearing impaired without inconveniencing and requiring assistance from the non-hearing impaired.

DPRS will enable the hearing impaired to communicate more directly with all Tennesseans. DPRS will create communications independence and employment opportunities for the hearing and speech impaired. Private business including telephone companies will acquire new markets and customers, and will experience growth in the usage of their services and the revenues related thereto.

Equal access to the telecommunications network for the hearing impaired will attract new telephone subscribers who up until now have found a telephone to be of little benefit and use, and subsequently will further the goal of this Commission to provide universal quality telephone service to all citizens of this state.

#### Service Standards

The telephone standards to be adhered to in providing DPRS are outlined in an earlier Order in this docket, and shall mirror the comparable telephone service which is now provided to non-hearing and communication impaired telephone users with minor exceptions.<sup>/2</sup>

More precise specifications for the anticipated telephone service for DPRS to be adhered to by the service provider are found in the Commission's Request for Proposal to Provide a Dual Party Relay System issued on April 16, 1990 and AT&T's response to this proposal dated May 18, 1990. The telephone companies supporting the provision of this service and the service provider shall be charged with the duty of maintaining this level of service for DPRS.

#### Funding

The total annual cost for providing DPRS service in Tennessee shall be initially divided into two cost figures -- one figure shall be assigned to the interLATA jurisdiction and the other to the intraLATA jurisdiction. To determine these two figures, the -----

<sup>/2</sup> No coin sent calls (due to the operator's inability to rate these calls), nor recorded messages which present technical difficulties shall be relayed.

percentage of interLATA and intraLATA minutes of use shall be derived from the 1989 calendar year total of all switched access minutes of use for all telephone companies in Tennessee. The percentage of intraLATA minutes of use of the total switched minutes of use in 1989 was determined to be 67% with 33% as the figure for interLATA minutes of use. Therefore, 67% of the DPRS annual cost shall be allocated to the intraLATA jurisdiction and 33% of the cost allocated to the interLATA jurisdiction.<sup>/3</sup>

Each Tennessee telephone company shall pay a pro rata share of the costs assigned to the interLATA and intraLATA jurisdictions. Each company's percentage of the minutes of use for each jurisdiction shall be used to determine that company's percentage of each cost figure. For example, if Company A has 30% of the total interLATA minutes of use and 40% of the total intraLATA minutes of use as derived from the 1989 switched access minutes of use then this company shall be allocated 30% of the interLATA cost assignment (30% of the 33% figure) and 40% of the intraLATA cost assignment (40% of the 67% figure). These cost allocations to the participating LECs may be adjusted in the years following the end of calendar year 1991 to reflect any changes in each company's respective percentages of the switched access minutes of use.

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<sup>/3</sup> The total annual DPRS cost here refers to a combined total of DPRS start-up costs and the projected costs of operation through the end of calendar year 1991.

The LECs may recover interLATA cost assignments through an annual adjustment to the Common Carrier Line Charge (CCLC). /4 Any initial adjustment to the CCLC for DPRS shall cover the cost projected for this service through the end of the calendar year of 1991. In each year thereafter, any annual adjustment to the CCLC to cover DPRS cost shall only be made coincident with other adjustments to the CCLC such as those mandated by the Commission's Final Order in the Megacom docket (No. U-87-7492, et al.) and shall be based on the switched access minutes of use figure used to calculate any such other adjustments. /5

Any adjustments to the intraLATA cost allocation figures for the participating LECs after 1991 may not necessarily be made at the same time as interLATA adjustments but shall be based on the same switched access minutes of use time period used for the interLATA DPRS cost adjustments. The methodology of allocating DPRS cost as described in this Order shall be utilized for any adjustments to DPRS cost allocations for the participating LECs for the years following 1991.

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/4 This is the charge to inter-exchange carriers for the use of local exchange telephone companies facilities in transmitting interLATA calls.

/5 Megacom adjustments are calculated based on the switched access minutes of use for the twelve months ending on June 30 of the year prior to the year in which the adjustment is to be made and are not based on calendar year minutes of use. Therefore, any adjustment to DPRS cost allocations coincident with a Megacom adjustment would be made based on the same time period for calculating the switched access minutes of use.

Any intraLATA cost allocations to participating LECs may be recovered as a part of each company's general revenue requirements. Any participating local exchange company may petition the Commission for relief, if necessary, from any significant financial impact directly relating to their DPRS cost assignment.

#### Administration

All local telephone companies in Tennessee, regulated and non-regulated, have agreed to provide and to fund a DPRS service for the citizens of this state in accordance with the service specifications and other provisions of this docket. Companies not regulated by this Commission have voluntarily agreed along with Commission regulated telephone companies to contract for the provision of this service and have voluntarily agreed to abide by the terms and conditions contained in the Orders in this docket as a part of their contractual obligations. This voluntary compliance is limited to the provision of DPRS service only, and in no way indicates an assertion of or subjection to Commission regulation of non-regulated companies in any other respect.

South Central Bell shall be the local telephone company designated to represent all the participating LECs in contractual arrangements with the service provider, AT&T. South Central Bell shall enter into individual contracts with each LEC for a period of three years for the purpose of fulfilling its obligation as the contract administrator for DPRS in Tennessee.

South Central Bell shall be responsible for collecting sufficient funding from the participating LECs to cover the costs of DPRS. South Central Bell shall also function as the liaison between the LECs and the service provider for all billing, service, and funding questions. The participating LECs may designate an oversight committee made up of representatives of the companies participating in the intraLATA toll pool and of the non-pool participating company to supervise and assist the contract administrator.

As contract administrator, South Central Bell shall enter into a three-year contract with the service provider, AT&T Communications of the Southern States on behalf of all participating LECs. Through this contract, AT&T will be responsible for providing dual party relay service in accordance with its Proposal to Provide a Dual Party Relay System in the state of Tennessee, dated May 18, 1990, and the Commission's Request for Proposal to Provide a Dual Party Relay System, issued on April 16, 1990 (RFP).

The final contract between AT&T and South Central Bell, subject to Commission approval, shall provide for a DPRS service which shall encompass the above-mentioned RFP, AT&T's Proposal in response to this RFP, and any other relevant provisions in the Orders in this docket.

The contract shall provide that the contract administrator, South Central Bell, shall be responsible for managing payment to

the service provider, any record keeping relevant thereto, and for billing the participating LECs for their respective shares of the cost of DPRS. Any necessary information requested by the contract administrator or the LEC oversight committee which the service provider considers competitively sensitive may be first submitted to the Commission staff for the determination of and any steps to be taken to assure that such information shall not be disclosed to potential telephone company competitors. The Commission staff may also conduct an independent audit of the DPRS service provider at the request of the contract administrator or the participating LECs or as a part of any general audit by the Commission staff of the service provider.

At any time, concerns about the service being provided, the funding and other matters relevant to DPRS may be submitted by the contract administrator and/or the participating LECs to the Commission staff and if unresolved, to the Commission for further action.

#### Billing

Billable calls to and from the center shall be billed by the end user's local exchange company (or their designee) at the tariffed rate established for the hearing impaired in this state. Local calls, i.e. calls which originate and terminate in the same local toll-free calling area regardless of the fact that these calls may be routed through the DPRS center outside the toll-free zone, shall be free of charge to the end user. Toll calls shall be

billed to end users as if the calls were placed between the originating and terminating call points instead of through the DPRS Center. The appropriate hearing-impaired discount shall be applied to all toll Relay Center calls./<sup>6</sup>

The service provider shall supply the participating LECs through the contract administrator with the necessary calling information to enable these companies or their designee to accurately bill the end user. The service provider shall indicate to the billing companies all local calls relayed for which no access charge is due and owing (see Commission RFP, p. 18) but shall be responsible for access charges on all other calls.

#### Consumer Advisory Panel

We shall appoint a DPRS Advisory Panel which shall be made up of representatives of the potential users of the service -- both hearing and non-hearing impaired. This panel shall be made up of individuals from different parts of the state and from different backgrounds. A commission staff person or persons shall also be appointed to this Advisory Panel.

The purpose of this organization which may be developed more in detail by the panel upon meeting shall be to monitor the provision of DPRS service in terms of quality, responsiveness to  
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/<sup>6</sup> The exception to this is 900 and 976 calls which shall not be discounted. Calls to 900 or 976 recorded message service shall not be relayed due to difficulty of transmission but may, nonetheless result in a charge to the end user since the operator will not be able to determine in advance whether the 900 service is recorded or interactive. Interactive 900 or 976 calls shall be relayed upon request.



end users, and compliance with Commission specifications. This panel may gather information and feedback from the end users for the service throughout the state and, particularly in their respective geographic areas, to assist them in this role./7

Any recommendations for adjustments or necessary improvements in service may be recommended for consideration to the Commission upon a majority vote of the Panel. In order to determine whether any adjustments or changes in DPRS are needed, the Commission may order a hearing or provide another forum for discussion with participation assured for all interested parties including the local telephone companies administering the service, the DPRS advisory panel, and the service provider. After such hearing or discussion, the Commission may take whatever action is deemed necessary or appropriate.

#### Conclusion

We commend those members of the Dual Party Relay System Advisory Committee, and the RFP selection sub-committee for their hard work, dedication, and assistance in the development of DPRS for Tennessee. We commend the telephone companies of Tennessee, regulated and non-regulated for their willingness to fund and administer a dual party relay system for Tennessee.

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/7 DPRS customers complaints shall be handled and processed by the Commission's Utility Service Division as any other service complaint. Any policy issues raised by these complaints may be referred to the Panel for consideration by the Director of the Utility Service Division.

We, hereby, order the implementation of a dual party relay system for Tennessee in accordance with the provisions of this Order and all other orders contained in this docket.

The Commission retains jurisdiction over the parties and subject matter in this matter for purposes of ordering such further action in this docket as may be necessary.

It Is So Ordered.

ATTEST

  
EXECUTIVE DIRECTOR

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER